

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**  
**Revision 2**

**May 18, 2007**

**TO:** Honorable Will Hartnett, Chair, House Committee on Judiciary

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB1655** by Ellis (Relating to the establishment of the capital writs committee and the office of capital writs.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1655, Committee Report 2nd House, Substituted: a negative impact of (\$57,837) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	(\$57,837)
2010	(\$71,417)
2011	(\$71,417)
2012	(\$77,604)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable Savings from <i>GENERAL REVENUE FUND</i> 1
2008	\$0	\$0
2009	(\$557,837)	\$500,000
2010	(\$571,417)	\$500,000
2011	(\$571,417)	\$500,000
2012	(\$577,604)	\$500,000

Fiscal Year	Change in Number of State Employees from FY 2007
2008	0.0
2009	4.5
2010	4.5
2011	4.5
2012	4.5

## **Fiscal Analysis**

The bill would amend the Government Code to establish the Office of Capital Writs and the Capital Writs Committee. The Capital Writs Committee would be composed of five members to be selected by the president of the State Bar of Texas. The committee would interview applicants for the position of director for the Office of Capital Writs and make hiring recommendations to the Court of Criminal Appeals. The bill would require the Court of Criminal Appeals to hire the director of the Office of Capital Writs no later than September 1, 2008.

The Office of Capital Writs would be appointed to represent indigent defendants in appeals of death penalty convictions. If it is necessary that another attorney other than an attorney employed by the Office of Capital Writs be appointed, that attorney would be provided state compensation not to exceed \$25,000 per case, as provided by Articles 11.071 and 26.05 of the Code of Criminal Procedure. The presiding judges of the administrative judicial regions would maintain a statewide list of competent counsel for appointment if it is necessary to appoint an attorney other than an employee of the Office of Capital Writs. The bill would repeal provisions of existing law that relating to a convicting court's appointment of counsel in death penalty cases.

The bill would take effect September 1, 2007.

## **Methodology**

The state provides an appropriation for death penalty representation in the amount of \$500,000 per year from General Revenue through the Judiciary Section, Comptroller's Department. This estimate assumes that beginning in fiscal year 2009, the new Office of Capital Writs would supersede the need for continuing this appropriation and thus this amount is shown as a cost savings.

Beginning in fiscal year 2009, estimated expenses for a Capital Writs Office are based on a forecasted caseload of 16 capital writs per fiscal year. This estimate assumes 4.5 full-time equivalent positions would be needed to staff a capital writs office capable of handling 12 cases per year, with private appointed counsel providing representation for 4 of the 16 cases. Staffing includes the following positions: 2.0 attorneys, 1.0 investigator, 1.0 legal assistant, and one part-time accountant (0.5 FTE) for a total of 4.5 FTEs. Salaries for the positions would cost \$268,226 in fiscal year 2008 and \$292,611 in fiscal year 2010 and each year thereafter, with related fringe benefits costing \$75,811 in fiscal year 2009 and \$82,780 in fiscal year 2010 and each year thereafter.

Operating expenses include supplies, telephone, copy expense, software maintenance, and other office expenses (\$21,325 in fiscal year 2009, \$21,026 in fiscal years 2010 and 2012, and \$22,255 in fiscal year 2012). Fluctuating operating costs relate to replacement cycles for needed information technology equipment. Expert witness expenses, document bank, and other litigation expenses are estimated to average \$6,250 per case and would total \$75,000 per fiscal year to handle a caseload of 12. Additionally, costs of four cases outsourced to private law firms would total \$25,000 per case (as provided by Articles 11.071 and 26.05 of the Code of Criminal Procedure) for a total of \$100,000 per fiscal year.

## **Technology**

Technology needs include a personal computer for each employee, shared printers, a file server, and software and the replacement of those items. Costs included in amounts described above would total \$17,475 in fiscal year 2009, and \$5,258 in fiscal year 2011.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

**LBB Staff:** JOB, MN, ES, ZS, TB, KJG